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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(El Dorado)

THE PEOPLE,

Plaintiff and Respondent,

v.

KENNETH JEFFREY,

Defendant and Appellant.

C060330

(Super. Ct. No.
P08CRF0121)

Defendant Kenneth Jeffrey distracted his victim, a man with disabilities, while Nathan Nattrass stole his Xbox and wallet from his bedroom. Defendant pled no contest to residential burglary. Although the court's minutes indicate that a \$250 fee for probation supervision is not a term of probation, the Attorney General concedes the probation order appears to make the fee a condition of probation. Defendant filed a notice of appeal and requested a certificate of probable cause. (Pen. Code, § 1237.5.) He has not attacked his plea, but he does ask us to clarify that the order granting probation and imposing the fee does not make payment a condition of probation. The Attorney General urges us to modify the order as requested.

Defendant and the Attorney General agree a probation supervision fee cannot be ordered as a term of probation. (*People v. Flores* (2008) 169 Cal.App.4th 568, 578.) Because everyone agrees the order is ambiguous and therefore the fee may be read as a condition of probation, we will modify the order to delete any requirement that defendant pay the costs of probation as a condition of his probation. (*Ibid.*)

The Attorney General also advises us that although defendant obtained a certificate of probable cause, he has raised an issue based on a matter occurring after his plea. Thus, according to the Attorney General, defendant's challenge to a "non-certificate" ground does not violate the underlying policy of Penal Code section 1237.5 and should be considered. We agree and modify the order as requested.

DISPOSITION

The order granting probation is modified to provide that the \$250 fee for probation supervision is not a term of probation. As modified, the order is affirmed.

RAYE, J.

We concur:

SCOTLAND, P. J.

HULL, J.